

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,
Plaintiff

v.

CRIMINAL 08-209(DRD)

[1] JOSUE ALBERTO DÁVILA PADRÓ,
[2] JONATHAN FONSECA TORRES,
Defendants

ORDER OF DETENTION PENDING TRIAL

Under 18 U.S.C. § 3141 et seq., judicial officers are required to release a defendant arrested for federal offenses on personal recognizance or an unsecured appearance bond, 18 U.S.C. § 3142(b); set the least restrictive conditions necessary to ensure defendant's appearance at all court proceedings, 18 U.S.C. § 3142(c); or under the Bail Reform Act, upon motion of the government, and finding by the court of, *inter alia*, flight risk, and/or dangerousness to any person or to the community, order the defendant detained without bond. 18 U.S.C. § 3142(e).

The detention hearing of these two defendants was held on June 6, 2008. (Docket Nos. 18 & 19). They are charged in an indictment handed down on May 29, 2008 with participating in a conspiracy to possess with intent to distribute five kilograms or more of cocaine and one kilogram or more of heroin, on board

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3 a vessel subject to the jurisdiction of the United States (a vessel registered in
4 Puerto Rico). (Docket No. 13.) They are also charged in a substantive count with
5 possessing with intent to distribute the same amount of cocaine and heroin.
6 Because the offenses were committed outside of the territorial jurisdiction of this
7 or any other district court, they were brought here by the arresting authority.
8 Originally, a search of the vessel they were on revealed the presence of 163 brick-
9 size packages of cocaine which weighed about 187 kilograms. A later search
10 revealed more bricks of cocaine as well as heroin. If convicted, the defendants
11 face a minimum of 10 years imprisonment.
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14 The defendants are presumptively risks of flight and dangers to the
15 community. See 18 U.S.C. § 3142(e). At the June 6, 2008 hearings, both
16 defendants presented "some evidence" to show that "what is true in general is not
17 true in [his] particular case" United States v. Jessup, 757 F.2d 378, 384
18 (1st Cir. 1985). The burden is one of production, not persuasion. Id. at 380-81.
19 Congress intended the presumption to have a practical effect. Id. at 382. The
20 remaining strength of the rebuttable presumption is considered along with the
21 other relevant factors in 18 U.S.C. § 3142(g). United States v. Palmer-Contreras,
22 835 F.2d 15, 18 (1st Cir. 1987). Title 18 U.S.C. § 3142(e) presumes
23 dangerousness. The Congress felt that a significant consideration in determining
24 danger to the community is the drug network's ability to continue to function while
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3 the defendants await trial and that there is a significant risk of pretrial recidivism.
4 S. Rep. No. 98-225, 98th Cong., 42nd Sess. 20, reprinted in 1984 U.S. Code Cong.
5 & Admin. News 3182, 3203.
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7 What is true in general has not been proven to be untrue in specific.
8 Conspiracy in federal law aggravates the degree of crime over that of unconcerted
9 offending. Krulewitch v. United States, 336 U.S. 440, 449 (1949). A collective
10 criminal agreement, a partnership in crime, presents greater threats to the public
11 than individual criminality. See Jeffers v. United States, 432 U.S. 137, 157
12 (1977); Ianelli v. United States, 420 U.S. 770, 778 (1975); Callahan v. United
13 States, 364 U.S. 587, 593-94 (1961). I have considered the alternatives to
14 pretrial detention but find them insufficient. (See Docket No. 21.) The particular
15 drug distribution enterprise, of which the defendants are probably a part, entails
16 risky and dangerous seaborne importation, and their roles, while appearing trivial
17 as wholesale importers, is essential for the enterprise to succeed.
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21 I adopt by reference the information of the pretrial report if not the
22 recommendation. Co-defendant Josue Alberto Dávila Padró's strong family ties
23 are in contrast to his ethereal financial ties and his wealth and income remain a
24 mystery, particularly since he does not file income tax returns. See 18 U.S.C.
25 §3142(g)(3)A). Jonathan Fonseca Torres was technically under a local diversion
26 program when this offense was committed. He is also a mystery in terms of
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3 assets and liabilities. As to him, I adopt by reference both the report and
4 recommendation of the pretrial services officer. Admittedly, the nature and
5 circumstances of the offense, identity of the drugs involved, roles of the offenders,
6 severity of the penalties and strength of the government's case weigh heavily in
7 this decision. See 18 U.S.C. § 3142(g)(1).
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10 Defendants have failed to rebut the presumption established by 18 U.S.C.
11 § 3142(e) that no condition or combination of conditions will reasonably assure
12 the safety of any other person and the community. They will be detained pending
13 trial based upon the probable cause determination of the grand jury, the nature
14 and circumstances of the offenses charged, the strength of the government's
15 case, and the failure to rebut the presumption mentioned above. See 18 U.S.C.
16 § 3142(f).
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18 Defendants JOSUE ALBERTO DÁVILA PADRÓ and JONATHAN FONSECA
19 TORRES are detained pending trial.
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21 It is ORDERED that JOSUE ALBERTO DÁVILA PADRÓ and JONATHAN
22 FONSECA TORRES be committed to the custody of the Attorney General for
23 confinement in a correction facility, separate, to the extent practicable, from
24 persons awaiting or serving sentences or being held in custody pending appeal.
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26 It is further ORDERED that the defendants be afforded reasonable
27 opportunity to consult with their attorneys in private.
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3 It is further ORDERED that on order of the court, or on request of the
4 attorney for the government, the person in charge of the corrections facility in
5 which the defendants are being confined, deliver them to the United States
6 Marshal, or his deputy, for the purpose of an appearance in connection with any
7 proceeding.
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10 In San Juan, Puerto Rico, this 20th day of June, 2008.

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12 S/ JUSTO ARENAS
13 Chief United States Magistrate Judge
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